

Case 7:15-cv-00420-JPJ-RSB Document 3 Filed 08/06/15 Page 1 of 2 Pageid#: 13

requires the petition to present the claims to the highest state court with jurisdiction to consider them. *See O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999). In Virginia, a petitioner may file a state habeas petition in the circuit court where he was convicted, with an appeal to the Supreme Court of Virginia, or directly in the Supreme Court of Virginia.

Kiser indicates on the face of his § 2254 petition that he has never presented his sentence calculation claim in a state habeas corpus petition, and state court records online also so indicate. Until he has given the Supreme Court of Virginia an opportunity to address these claims, he has not demonstrated exhaustion available state court remedies as required by § 2254(b). Therefore, I must dismiss his § 2254 petition without prejudice for failure to exhaust state court remedies. *See Slayton v. Smith*, 404 U.S. 53, 54 (1971) (finding that § 2254 habeas petition must be dismissed without prejudice if petitioner has not presented the claims to the appropriate state court and could still do so).¹

A separate Final Order will be entered herewith.

DATED: August 6, 2015

/s/ James P. Jones

United States District Judge

¹ Under Rule 4(b) of the Rules Governing § 2254 Cases, I may summarily dismiss a § 2254 petition “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court.”